IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5755 OF 2006

Dinesh Deu Gawade ..Petitioner.
Vs.
M/s. Caprihans India Ltd. & Ors. ..Respondents.

Mr.I.R.Kulkarni, adv. for the Petitioner.

Mr.R.M.Haridas, adv. for the Respondent Nos.1 and 2.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 7, 2007.

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and the matter is taken up for final hearing forthwith with consent of the learned counsel for the parties.

2. Heard the learned counsel for the Parties. Perused the plaint filed by the petitioner before the trial Court as well as the application for amendment and the impugned order.

3. The petitioner was an employee of the respondent. On a report lodged by an officer of the respondent, the petitioner was arrested by the police on 20th July, 2002 for the offences punishable under Sections 381 and 408 of the I.P.C. He was in police custody upto 2nd August, 2002 and thereafter he was in jail. On 6-8-2002 he was released on bail from jail

and since he was suffering from same ailments, he was directly taken to and admitted in a hospital. According to him, when he was in jail, a charge-sheet was issued by the respondent company and when he was still in hospital, the exparte enquiry was concluded and he was dismissed from the service by an order dated 2-9-2002. The petitioner filed S.C.Suit no.1107 of 2005 in November, 2002 seeking declaration that the exparte enquiry against him was illegal, null and void and he also sought a declaration that the dismissal order issued pursuant to the exparte enquiry against him is null and void and bad in law and he also sought a direction to set aside his dismissal. On 17th March, 2006, the petitioner took out Chamber Summons No.395 of 2006 seeking amendment in the plaint whereby he sought to add paragraph 7A alleging that had he not been dismissed, he would have served with the respondent for further eight years till the date of his superannuation. At the time of dismissal his salary was Rs.9,645/- and he expected to earn Rs.9,26,000/- towards the wages/salary till the date of his superannuation. He also sought to add prayer clause (cc) seeking a decree for payment of damages to the tune of Rs.9,26,000/-. Chamber summons was contested on behalf of the defendant contending that it was barred by limitation. The learned Judge of the City Civil Court rejected that application by an order dated

27th April, 2006 holding that the plaintiff was aware that he was entitled to damages, when he filed the suit and the amendment was sought to be made more than three years after the suit and, therefore, the claim seeking damages itself is barred by the limitation. The learned Judge agreed with the contention of the defendant that due to bar of limitation, certain rights have accrued to the defendants and those rights could not be taken away by making amendment. The plaintiff has challenged the order rejecting the application for amendment by filing this petition.

4. From the facts pleaded by the plaintiff as stated above, it would appear that when he was dismissed from service on 2-9-2002, according to him he was yet to serve for 8 years more and though the exact date of his superannuation is not on record, he was to retire on attaining the age of superannuation sometimes in the year 2010. He sought a declaration that his dismissal was bad in law. If the suit would have been decreed, he could claim reinstatement as well as arrears of salary. Presuming for a moment that on 17th March, 2006, when he took out chamber summons for amendment, he had filed a suit for damages, he could claim damages for a period of 3 years immediately preceding the date of that suit. It means his claim for damages would be within limitation from 17th March,

2003 onwards but his claim for damages for the period prior to 17th March, 2003 would be barred by the limitation in view of the Article 58 of the Indian Limitation Act. By no stretch of imagination it could be said that his claim for damages or for payment of arrears of salary from 17th March, 2003 onwards would be barred by the limitation. In fact, according to him, he was about to retire in the year 2010 or so; therefore, his claim would be for damages not only for the past period but also for the future. In these circumstances, I fail to understand how the amendment could be rejected holding that the claim was barred by the limitation. At the most claim of the petitioner for damages for the period prior to 17th March, 2003 could be deemed to have been barred by the limitation.

5. The learned counsel for the respondent/defendant placed reliance upon **Radhika Devi v. Bajrangi Singh and others (1996) 7 Supreme Court Cases 486** as well as **Ashok Daga Patil v. Daga Yadav Patil 2003(1) Maharashtra Law Journal 686.** In the case of **Radhika Devi,** suit for partition was filed by the appellant in 1988. The respondents filed written statement contending that gift of the property was made in their favour. For a period of more than 3 years, the appellant did not take any steps for seeking declaration that the gift was obtained by the

respondent illegally and fraudulently and was ineffective and was not binding. In November, 1992 they made an application seeking amendment in the plaint seeking such a declaration. Their Lordships of the Supreme Court held that the suit for such a declaration could be filed within 3 years from the date of knowledge and this knowledge could be attributed atleast from the date on which the respondents had taken that plea in the written statement. As the amendment was sought more than 3 years after that date, the suit for such a declaration would be barred by the limitation, therefore, amendment could not be allowed. In the case of **Ashok D. Patil** also amendment was sought to be made in a plaint in respect of certain partition deed, which was executed and registered on 6th January, 1982. As the date of knowledge of that partition deed was not disclosed, it was presumed that the date of registration of the same would be the date of knowledge also. The suit seeking declaration that the partition deed was not valid could be filed within a period of three years. As such a suit would have been barred by the limitation when the amendment was sought, amendment application was found to be barred by the limitation by a Single Judge of this Court. Taking into consideration the facts of those cases, these two authorities are not at all applicable to the facts of the present case. It appears that the learned trial

Court has failed to consider the question of limitation in its proper perspective in view of the claim sought to be introduced by way of amendment in this case.

6. Taking into consideration the above circumstances, petition is allowed. The impugned order is hereby set aside. The Chamber Summons No.395 of 2005 is hereby allowed and the petitioner/plaintiff is allowed to make amendment. If after making the amendment, the claim of the plaintiff goes beyond the pecuniary jurisdiction of the City Civil Court, the learned Judge may pass an appropriate order to return the plaint to the plaintiff for presentation of the same before the competent Court having jurisdiction.

7. Rule made absolute accordingly.

[J.H.BHATIA, J.]